

A REPORT TO THE CONGRESS

# **Unauthorized Appropriations and Expiring Authorizations**

**pursuant to**

**Section 202(e)(3) of the Congressional Budget and  
Impoundment Control Act, as Amended**

**JANUARY 12, 2001**



**CONGRESSIONAL BUDGET OFFICE  
SECOND AND D STREETS, SW  
WASHINGTON, DC 20515**

## **PREFACE**

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This report by the Congressional Budget Office (CBO) satisfies the requirements of section 202(e)(3) of the Congressional Budget and Impoundment Control Act, as amended. The purpose of the report is to help the Congress adopt authorizing legislation that should be in place before it considers the 13 regular appropriation bills for fiscal year 2002, which begins on October 1, 2001.

Ellen Hays of CBO's Budget Analysis Division prepared this report under the supervision of Peter Fontaine. The author gratefully acknowledges the assistance of analysts in the Scorekeeping Unit of the Budget Analysis Division (Joanna Capps, Catherine Mallison Little, Virginia Myers, Robert Sempsey, and Amy Wendholt). The budget offices of various agencies, as well as numerous staff members of Congressional committees, also provided valuable assistance.

Christine Bogusz edited the report, Christian Spoor proofread it, and Marion C. Curry prepared it for publication. Annette Kalicki prepared the electronic versions for CBO's Web site ([www.cbo.gov](http://www.cbo.gov)). Questions about the contents should be directed to Ellen Hays at (202) 226-2880.

Dan L. Crippen  
Director

January 12, 2001

## **OVERVIEW**

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Each year, the Congressional Budget Office (CBO) is required to report to the Congress on unauthorized appropriations and expiring authorizations. That requirement comes from the Balanced Budget and Emergency Deficit Control Act of 1985, which amended the Congressional Budget and Impoundment Control Act of 1974. Section 221(b) of the Deficit Control Act added the following requirement to section 202(e)(3) of the Congressional Budget Act, as amended:

On or before January 15 of each year, the Director [of CBO], after consultation with the appropriate committees of the House and the Senate, shall submit to the Congress a report listing (A) all programs and activities funded during the fiscal year ending September 30 of that calendar year for which authorizations for appropriations have not been enacted for that fiscal year, and (B) all programs and activities for which no authorizations for appropriations have been enacted for the fiscal year beginning October 1 of that calendar year.

According to the conference report on the Deficit Control Act, the purpose of that amendment was "to help Congress use the early months of the year to adopt authorizing legislation that must be in place before the thirteen regular appropriation bills can be considered."

## **THE ROLE OF AUTHORIZATIONS**

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Authorization laws have two basic purposes. They establish, continue, or modify federal programs, and they are a prerequisite under House and Senate rules (and sometimes under statutes) for the Congress to appropriate budget authority for programs.

Some authorization laws provide spending directly. In fact, more than half of federal spending now goes to programs for which the authorizing legislation provides budget authority. Such spending is referred to as direct, or mandatory, spending. It includes funding for most major entitlement programs. (Some entitlements are funded in annual appropriation acts, but the amounts provided are controlled by the authorization law that established the entitlement.) The authorization laws that provide direct spending are typically permanent, but some major direct-spending programs, such as the Food Stamp program, require periodic renewal.

Another one-third of federal spending is discretionary spending, which is provided in the 13 annual appropriation acts.<sup>1</sup> For discretionary spending, the role of the authorizing committees is to enact legislation that serves as the basis for operating a program and that provides guidance to the Appropriations Committees on the appropriate level of program funding. That guidance is typically expressed as an authorization of appropriations. Such authorizations are provided either for specific dollar amounts (definite authorizations) or for "such sums as are necessary" (indefinite authorizations).

Authorizations may be permanent, or they may cover only specific fiscal years. Authorizations that have a specific duration may be annual (pertaining to one fiscal year) or multiyear (pertaining to two, five, or any specific number of fiscal years). When such an authorization expires, the Congress may choose to extend the life of a program by passing a reauthorization. Unless the underlying law expressly prohibits it, the Congress may also extend a program simply by providing new appropriations for that program. Appropriations made available for a program after its authorization has expired are considered "unauthorized" appropriations.

Unauthorized appropriations in appropriation bills are subject to the rules of both Houses of Congress. Rule 21 of the House of Representatives prohibits appropriations in a general appropriation bill or in an amendment to a bill that have not been previously authorized by law. Rule 16 of the Senate restricts amendments to general appropriation bills that increase an appropriation or add a new item of appropriation unless authorized by existing law. Both rules subject the legislation containing the unauthorized appropriation to a point of order during consideration on the floor of the House or Senate.<sup>2</sup> In the House, a point of order may be avoided by waiving the application of Rule 21 in the rule governing consideration of the general appropriation. In the Senate, a point of order under Rule 16 cannot be waived. However, whether a point of order is raised at all is within the individual discretion of each Senator. The result of those parliamentary procedures is that such points of order are raised infrequently in both houses.

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1. The remaining federal spending is used to pay interest costs on the national debt.
  2. A point of order is an objection raised by a Member of Congress against legislation or a procedure on the grounds that the legislation or procedure violates the rules of the House or Senate. The Presiding Officer decides whether to sustain or overrule the point of order on the basis of the specific rule and precedents under that rule. The decision of the Presiding Officer is subject to appeal to the House or Senate.

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## THE CONTENTS OF THIS REPORT

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The substance of this report consists of two appendixes. Appendix A lists unauthorized appropriations—programs that have received an appropriation for fiscal year 2001 although their authorization has expired. Appendix B lists programs whose authorization will expire on or before the end of fiscal year 2001. For all appropriated programs that at one time had an explicit authorization that has expired or will expire, the appendixes show the number and name of the public law containing the last authorization, the last year the authorization was in effect, and the amount authorized in that year. If the authorization was provided for "such sums as are necessary," the report shows the amount authorized as "indefinite."

The information in this report is drawn from CBO's Legislative Classification System, a database reflecting all public laws that contain nonpermanent authorizations of appropriations—up to and including all laws enacted during the second session of the 106th Congress.

During the 106th Congress, both House and Senate rules required that when the Appropriations Committee reported a bill, it list in its committee report any programs funded in the bill that lacked an authorization—including programs for which the Congress has never provided authorizations of appropriations. (Some Treasury Department programs, for example, have never received explicit authorizations. They receive appropriations nonetheless because the authority to obligate and spend funds is considered "organic"—inherent in the underlying legislation or executive action that originally empowered the Treasury to perform particular functions.) This CBO report, in contrast, covers only programs that *at one time* had an explicit authorization that either has expired or will expire.

As mentioned earlier, many laws establish programs with authorizations of discretionary appropriations that do not expire. Both the Appropriations Committee reports and this CBO report exclude programs with that type of authorization because its effect is permanent.

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## PROGRAMS FUNDED IN FISCAL YEAR 2001 WITH EXPIRED AUTHORIZATIONS OF APPROPRIATIONS

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Appendix A lists programs and activities that have received a fiscal year 2001 appropriation even though their authorization has expired. If the applicable fiscal year 2001 appropriation act (or its legislative history) provides an explicit funding level for the program, that amount is shown under "Unauthorized FY 2001 Appropriations." If no explicit amount is provided (as when a small program is funded at an unidentified level in a large appropriation account), CBO contacts the

agency's budget office to determine whether the program is still being funded and, if so, the amount allocated for it. If the allocated amount cannot be determined, the appendix notes that a specific dollar amount of unauthorized 2001 appropriations is not available.

The Congress has appropriated just over \$112 billion for fiscal year 2001 for programs and activities with expired authorizations (see Tables 1, 2, and 3). The largest amount for a single program is for veterans' medical care (\$20.3 billion), which was authorized through the end of 1998. Although the authorizing committee states that the relevant authorization of appropriations—in Public Law 104-262—was intended only as a cap on budget authority for veterans' medical care in 1997 and 1998, it is treated in this report as any other authorization of appropriations.

Likewise, much of the funding provided for the Department of Justice in 2001 (\$16.8 billion) is included as unauthorized despite a general provision in the applicable appropriation act that extends the Department of Justice Appropriation Authorization Act for Fiscal Year 1980 for the current fiscal year. Additional funding is provided for many Department of Justice programs that are separately authorized, such as those in the Violent Crime Control and Law Enforcement Act of 1994 and the Antiterrorism and Effective Death Penalty Act of 1996. Many of the programs in those two acts expired at the end of 2000.

Virtually all of the programs authorized in the Improving America's Schools Act of 1994 expired at the end of 1999. That act provided indefinite authorizations for Impact Aid and most other federal programs affecting elementary and secondary education. Impact Aid and the Even Start program were reauthorized, but the 106th Congress did not reauthorize the remaining Elementary and Secondary Education Act programs; \$16.7 billion is provided for the act's unauthorized programs in 2001. The General Education Provisions Act provides for an automatic one-year extension of all Department of Education programs, as noted in the appendixes.

The Congress reauthorized \$3.9 billion in security assistance programs in Public Law 106-280. Funding for economic support and development assistance programs was last authorized for 1987 by the International Security and Development Cooperation Act of 1985; their funding totals just over \$4.1 billion in 2001. Many housing and community development programs of the Department of Housing and Urban Development were last authorized for 1994; they are funded at \$7.8 billion in 2001.

TABLE 1. FISCAL YEAR 2001 APPROPRIATIONS WITH EXPIRED AUTHORIZATIONS, BY HOUSE AUTHORIZING COMMITTEE  
(In millions of dollars)

House Committee	Number of Laws	Appropriation Amounts <sup>a</sup>
Agriculture	4	546
Armed Services	0	0
Education and the Workforce	11	18,175
Energy and Commerce	28	16,226
Financial Services	6	8,932
Government Reform	1	10
House Administration	1	41
Intelligence	1	7
International Relations	7	4,897
Judiciary	14	22,101
Resources	17	900
Science	12	10,813
Small Business	0	0
Transportation and Infrastructure	12	7,343
Veterans' Affairs	3	20,282
Ways and Means	<u>1</u>	<u>2,075</u>
Total	112 <sup>b</sup>	112,347

SOURCE: Congressional Budget Office.

- a. Amounts specified in statute or legislative history or available from executive branch agencies. Amounts do not include the across-the-board cut in Public Law 106-554. Numbers may not add up to total because of rounding.
- b. The total is less than the sum of the entries because public laws containing authorizations under the jurisdiction of more than one committee are counted only once in the total.

TABLE 2. FISCAL YEAR 2001 APPROPRIATIONS WITH EXPIRED AUTHORIZATIONS, BY SENATE AUTHORIZING COMMITTEE  
(In millions of dollars)

Senate Committee	Number of Laws	Appropriation Amounts <sup>a</sup>
Agriculture, Nutrition, and Forestry	5	548
Armed Services	0	0
Banking, Housing, and Urban Affairs	7	8,996
Commerce, Science, and Transportation	22	7,988
Energy and Natural Resources	10	7,046
Environment and Public Works	18	3,414
Finance	1	2,075
Foreign Relations	6	4,832
Governmental Affairs	1	10
Health, Education, Labor, and Pensions	22	35,035
Indian Affairs	3	23
Intelligence	1	7
Judiciary	14	22,050
Rules and Administration	1	41
Small Business	0	0
Veterans' Affairs	<u>3</u>	<u>20,282</u>
Total	112 <sup>b</sup>	112,347

SOURCE: Congressional Budget Office.

- a. Amounts specified in statute or legislative history or available from executive branch agencies. Amounts do not include the across-the-board cut in Public Law 106-554.
- b. The total is less than the sum of the entries because public laws containing authorizations under the jurisdiction of more than one committee are counted only once in the total.

TABLE 3. FISCAL YEAR 2001 APPROPRIATIONS WITH EXPIRED AUTHORIZATIONS, BY APPROPRIATIONS SUBCOMMITTEE  
(In millions of dollars)

Appropriations Subcommittee	Number of Laws	Appropriation Amounts <sup>a</sup>
Agriculture, Rural Development, FDA, and Related Agencies	4	546
Commerce, Justice, State, the Judiciary, and Related Agencies	33	25,970
Defense	1	7
District of Columbia	0	0
Energy and Water Development	9	6,448
Foreign Operations, Export Financing, and Related Programs	4	4,518
Interior and Related Agencies	18	1,451
Labor, Health and Human Services, Education, and Related Agencies	21	29,961
Legislative	0	0
Military Construction	0	0
Transportation and Related Agencies	5	4,706
Treasury, Postal Service, and General Government	6	2,223
VA, HUD, and Independent Agencies	<u>27</u>	<u>36,516</u>
Total	112 <sup>b</sup>	112,347

SOURCE: Congressional Budget Office.

NOTE: FDA = Food and Drug Administration; VA = Department of Veterans Affairs; HUD = Department of Housing and Urban Development.

- a. Amounts specified in statute or legislative history or available from executive branch agencies. Amounts do not include the across-the-board cut in Public Law 106-554. Numbers may not add up to total because of rounding.
- b. The total is less than the sum of the entries because public laws containing authorizations under the jurisdiction of more than one subcommittee are counted only once in the total.

Other programs funded in 2001 despite expired authorizations include many programs of the National Institutes of Health (last authorized for 1996), the Coast Guard (last authorized for 1999), the Customs Service (last authorized for 1992), and the National Science Foundation (last authorized for 2000). Finally, Department of Energy programs that were last authorized for 1984 are receiving \$4.8 billion in 2001.

#### AUTHORIZATIONS OF APPROPRIATIONS EXPIRING ON OR BEFORE SEPTEMBER 30, 2001

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Appendix B lists programs and activities whose authorizations will expire on or before September 30, 2001. Unlike Appendix A, the list indicates (by public law) the amounts *authorized* to be appropriated in 2001 for expiring programs and activities, rather than the amounts actually appropriated in 2001.

Just under \$310 billion worth of authorizations—under the jurisdiction of 14 House and 14 Senate authorizing committees—will expire at the end of this fiscal year (see Tables 4, 5, and 6). Typically, authorizing committees attempt to reauthorize programs before they are set to expire.

Some programs were reauthorized during the second session of the 106th Congress—but only through the end of 2001. The largest such reauthorization is the annual portion of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398), which includes the Maritime Administration and atomic energy defense activities. Another annual reauthorization is the Intelligence Authorization Act for Fiscal Year 2001 (Public Law 106-567).

Various programs with authorizations longer than one year are also set to expire at the end of 2001, including roughly \$5.5 billion worth of State Department programs authorized in the Omnibus Consolidated Appropriations Act for Fiscal Year 2000 (Public Law 106-113).

TABLE 4. AUTHORIZATIONS OF APPROPRIATIONS EXPIRING ON OR BEFORE  
SEPTEMBER 30, 2001, BY HOUSE AUTHORIZING COMMITTEE  
(In millions of dollars)

House Committee	Number of Laws	Authorization Amounts <sup>a</sup>
Agriculture	1	0
Armed Services	2	302,088
Education and the Workforce	3	164
Energy and Commerce	6	270
Financial Services	6	0
Government Reform	2	8
House Administration	0	0
Intelligence	1	379
International Relations	4	5,740
Judiciary	4	224
Resources	5	142
Science	1	40
Small Business	0	0
Transportation and Infrastructure	5	156
Veterans' Affairs	3	80
Ways and Means	<u>2</u>	<u>335</u>
Total	41 <sup>b</sup>	309,627

SOURCE: Congressional Budget Office.

- a. Amounts specified in statute or legislative history. When an authorization is indefinite (that is, "such sums as are necessary"), it is shown as zero. Numbers may not add up to total because of rounding.
- b. The total is less than the sum of the entries because public laws containing authorizations under the jurisdiction of more than one committee are counted only once in the total.

TABLE 5. AUTHORIZATIONS OF APPROPRIATIONS EXPIRING ON OR BEFORE  
SEPTEMBER 30, 2001, BY SENATE AUTHORIZING COMMITTEE  
(In millions of dollars)

Senate Committee	Number of Laws	Authorization Amounts <sup>a</sup>
Agriculture, Nutrition, and Forestry	1	0
Armed Services	2	302,088
Banking, Housing, and Urban Affairs	5	0
Commerce, Science, and Transportation	6	262
Energy and Natural Resources	1	40
Environment and Public Works	7	299
Finance	1	30
Foreign Relations	4	5,740
Governmental Affairs	2	8
Health, Education, Labor, and Pensions	4	468
Indian Affairs	4	9
Intelligence	1	379
Judiciary	4	224
Rules and Administration	0	0
Small Business	0	0
Veterans' Affairs	<u>3</u>	<u>80</u>
Total	41 <sup>b</sup>	309,627

SOURCE: Congressional Budget Office.

- a. Amounts specified in statute or legislative history. When an authorization is indefinite (that is, "such sums as are necessary"), it is shown as zero.
- b. The total is less than the sum of the entries because public laws containing authorizations under the jurisdiction of more than one committee are counted only once in the total.

TABLE 6. AUTHORIZATIONS OF APPROPRIATIONS EXPIRING ON OR BEFORE  
SEPTEMBER 30, 2001, BY APPROPRIATIONS SUBCOMMITTEE  
(In millions of dollars)

Appropriations Subcommittee	Number of Laws	Authorization Amounts <sup>a</sup>
Agriculture, Rural Development, FDA, and Related Agencies	1	0
Commerce, Justice, State, the Judiciary, and Related Agencies	10	5,308
Defense	3	289,189
District of Columbia	0	0
Energy and Water Development	6	13,165
Foreign Operations, Export Financing, and Related Programs	4	910
Interior and Related Agencies	2	8
Labor, Health and Human Services, Education, and Related Agencies	8	603
Legislative	0	0
Military Construction	1	0
Transportation and Related Agencies	4	351
Treasury, Postal Service, and General Government	3	10
VA, HUD, and Independent Agencies	<u>10</u>	<u>83</u>
Total	41 <sup>b</sup>	309,627

SOURCE: Congressional Budget Office.

NOTE: FDA = Food and Drug Administration; VA = Department of Veterans Affairs; HUD = Department of Housing and Urban Development.

- a. Amounts specified in statute or legislative history. When an authorization is indefinite (that is, "such sums as are necessary"), it is shown as zero.
- b. The total is less than the sum of the entries because public laws containing authorizations under the jurisdiction of more than one subcommittee are counted only once in the total.